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Supreme Court U.S.
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No. 01-1038

In the
Supreme Court of the United States

ADMINISTRATION PROCEEDING
ESTATE OF DEBRA LYNCH
a/k/a Debra L. Lynch & Debra Franchi, Deceased

Dean Lynch,
Petitioner

Patricia Flaherty, Linda A. Kacewicz,
and Michael P. Franchi,
Respondents

On Petition for Writ of Certiorari
To The New York Court of Appeals

REPLY TO BRIEF IN OPPOSITION

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14pp

INTRODUCTORY STATEMENT

Petitioner has read and reviewed Respondents' Brief in Opposition to Petition for Writ of Certiorari. With all due respect, Respondents' counsel, appears to have filed a Cross-Petition. Respondents Brief fails to address the "Questions Presented for Review" by Petitioner and includes its own "Questions Presented". Respondents' points and arguments that follow do not address either Petitioner's or their own questions directly. The Rules of this Honorable Court which allow the filing of "a reply brief addressed to new points raised in the brief in opposition" present a difficult circumstance when applied to Respondents' Brief. The Questions, Points and Argument exemplify the Petition's assertion that "procedures are misused to hide the truth." (page 27)
Respondents have attempted to weave a web of confusion to divert attention from the important constitutional "Questions Presented for Review" in the Petition.

Reproduce from Petition

QUESTIONS PRESENTED FOR REVIEW

I. Before full faith and credit is granted to a judgment in the courts of other states does constitutional due process require an inquiry into jurisdiction?

II. Does constitutional due process of law include known fraud being entitled to full faith and credit?

III. Does constitutional due process allow the dismissal of an action based upon evidence not properly before the tribunal and not subject to confrontation?

IV. Without jurisdiction, does notice satisfy the constitutional due process requirement for a full and fair opportunity to be heard?

V. Does equal protection under the law require a court to protect the interests of an unrepresented infant?

VI. Does the denial of appellate review without opinion evidence an arbitrary and capricious denial of due process?

VII. How can equal protection and due process under the law be insured in the 21st Century?

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Respondents' "Questions Presented"

I. Is a constitutional issue which is not raised in the trial court preserved for review in the United States Supreme Court?

The Petition for Writ of Certiorari (hereafter Petition) sets forth at length the Petitioner's position at Reasons for Granting the Writ III (page 15). There was no opportunity to preserve the constitutional issue at the trial court. Under the facts of this case there was no constitutional issue before the New York trial court. When the matter was submitted in April 1999, there no Massachusetts decree of June 15, 1999 existed. The constitutional issues arose when the New York trial court (Surrogate Weiner) acted without notice to Petitioner's attorney and relied upon the Massachusetts decree. Said decree was not properly before the New York court and Petitioner's attorney was never given the opportunity to address that decree or any of the issues flowing therefrom. It is this clear departure from the "accepted and usual course of judicial proceedings" which the New York Appellate Court and Court of Appeals have sanctioned and requires "an exercise of this Court's supervisory power".

II. Is a final judgment of a state entitled to Full Faith and Credit in the courts of another state?

As illustrated by the cases in the Petition, there are constitutionally mandated conditions of due process which must be adhered to prior to any judgment being afforded Full Faith and Credit. The most important of these conditions is jurisdiction. In the case at bar, it is not disputed that jurisdiction in an estate matter is controlled by "where decedent was domiciled when she died." Petitioner asserts that prior to the sister state extending full faith and credit there must be a finding that the state where the judgment was entered had subject matter jurisdiction.

III. Where a potential beneficiary receives notice of a state court proceeding and contacts that state court but then intentionally fails to appear in that proceeding, does the Full faith and Credit clause preclude collateral attack of that court's decree in another state?

The Petition as supported by the case law therein answers "NO". It is undisputed that Petitioner intentionally failed to appear. Clearly as set forth in the Petition (pages 16-19), if Petitioner had appeared he would have lost his right to collateral attack the issue of jurisdiction. It appears to be Respondents' position that Petitioner had no right to rely upon the rule of law to protect his daughter and himself from the Catch-22 situation of June 15, 1999.

IV. Where collateral attack on a judgment is not available in the state rendering the judgment, can the judgment be collaterally attacked in another state?

With all due respect, the Petitioner has no idea what Respondents are asking, or how it relates to the issues before this Honorable Court. The case at bar concerns the Trial Court of the State of New York which had found that the divorce action abated at death of plaintiff, but still could afforded Full Faith and Credit to a Massachusetts default decree which:

a) was not properly before it;
b) never allowed to be addressed by Petitioner's attorney;
c) acknowledged it lacked personal jurisdiction;
d) did not address subject matter jurisdiction
e) knew form personal knowledge obtained during the divorce hearing concerning decedent's terminal illness; and
f) was based upon and included the representation that the decedent was divorced.

The Appellate Court and Court of Appeals of New York were made aware that in Massachusetts (See Petition Appendix F) a hearing had been requested as to subject jurisdiction in light of the issues of domicile and competency, but the Massachusetts court disregarded that request and entered the default decree. It is an undisputed fact that no court has examined the facts as to jurisdiction/domicile. The attack upon jurisdiction is not collateral, but direct because without jurisdiction the foreign judgment is a nullity, and need not even be addressed under the Full faith and Credit.

V. Even if the federal constitution mandated to provide Full Faith and Credit does not require the courts of one state to enforce the judgment of another state, may a state provide a greater degree of Full Faith and Credit than is mandated by the constitution? Alternatively, may the second state enforce the judgment as a matter of comity or under its own local law?

It appears that Respondents are asserting that the Full Faith and Credit clause benefits the states in the administration of justice, and that consideration is paramount and the states in applying the mandate of Full faith and Credit can disregard the constitutional rights of an individual. In the second part of the question, Respondents assert that comity or local law, may enforce a comedy of constitutional rights. That is exactly what has transpired in the State of New York where known fraud is entitled to full faith and credit. The Petitioner had the reasonable expectation that his rights would be protected in his home state where he was recognized as the surviving spouse.

VI. Does due process preclude determining an issue solely on papers submitted to a court? Does due process require a court to hold a hearing or to issue a written opinion responding to every argument made by a party?

The answer is "Yes" when the papers submitted are:

(a) untimely and improperly submitted [ie. the Massachusetts default decree]
(b) include known misrepresentations of fact [ie. marital status]

(c) the interests of an infant are being negatively impacted [ie: courts were aware infant had received no account in the years –now 5 ½- as to her mother's estate and trusts]

(d) under the unique and unusual circumstances of this case.

The Petition asserts due process requires that a written determination of jurisdiction be included in every judicial proceeding prior to application for full faith and credit in a sister state.

VII. Is a claim to be the administrator of an estate a property right protected by due process?

A review of the Record below would reveal that this is not an issue in that Petitioner had stated by affidavit dated March 25, 1999 that he had no objection to the appointment of Joseph McGlinn, Esq., as Administrator of the Estate of Debra Lynch. Mr. McGlinn died on August 16, 2000. Petitioner would still request an independent person be appointed Administrator of the Estate. Petitioner is being denied his rights as the surviving spouse of Debra Lynch.

I. If the Petitioner could not possibly prevail, as a matter, of law, upon a remand of the case, should this Court grant certiorari?

The Reasons for Granting the Writ in the Petition sets forth why Petitioner feels he will prevail given a full and fair opportunity to be heard and why this matter should be addressed by this most Honorable of Courts. *
As reflected in the Petition (VI; VII & Conclusion) winning or losing should be secondary to the administration of justice. What should be paramount to this most Honorable of Courts is that there be equal justice under the law for all American.

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*Respondents know that Petitioner "could not possibly prevail" for the same reasons it took Justice/Surrogate Weiner over 2 years after decedent's death to declare an abatement and April to September to not address subject matter jurisdiction, but only 13 days to dismiss Petition (NEW YORK) to allow the Massachusetts Petition filed November 24, 1998 to be first in time. See Respondents' Appendix 4 Amended New York Petition filed November 23, 1998 first in time & right.

AS TO RESPONDENTS ARGUMENT

The tone and tactics of Respondents' brief is the same as was presented in the state courts. The tactics are to slander the Petitioner saying that he is a gold digging ex-husband who has committed fraud on the court and wishes to steal from his own daughter, and is solely motivated by greed, and rewrite history. Petitioner's motivations are clearly set forth in Respondents' Appendix 2 and 5. The history is so tragic that Petitioner wishes it could be rewritten.

The tone is that Respondents know the law and the facts and no one should dare question their "misrepresentations" as to "both law and fact", particularly Petitioner, "an attorney, appearing *pro se*."

Respondents appear to rely on the fact that due to the volume of paper, no one will cross check the record or (at this level) the Appendix to discover their spinning of the facts. Respondents' Brief and Appendix contains many examples which illustrate this contention. Petitioner sets forth below a few to confirm Respondents' practice.

At page 7, Respondents assert that: "Petitioner's claim that Massachusetts had no jurisdiction is founded primarily on his false and irrelevant claim that Respondents' counsel misrepresented decedent's marital status to the Massachusetts court." To support this assertion Respondents have obtained an affidavit (without notary) from Richard W. Renehan, Esq. (pages 44a-45a) Said affidavit if read together with Petitioner's Appendix F clearly does not support

their assertion, but illustrates that Respondents are continuing to attempt to mislead this Honorable Court and rewrite the facts. On June 15, 1999, Richard W. Renehan, Esq. knew or should have known that the Order of the Supreme Court of New York (trial court) dated October 28, 1998 had abated the divorce action. Moreover as set forth in Respondents' Appendix 2, there never was a decree or judgment of divorce issued and/ or entered on January 11, 1996.
"The judgment of divorce to be entered herein will not be entered until confirmation of the stipulation of settlement which is as follows:." (page 6a) Even giving Mr. Renehan the benefit of the doubt, how is September 5, 1996< the date of Debra Lynch's death, "two years after the divorce"?

At page 8, Respondents assert that "The nominated executors under the Will, Respondents herein, commenced probate proceedings in that court and duly served all interested persons—including Petitioner-by November 4, 1998."
A paragraph later Respondents refer to Petitioner's letter of November 16, 1998 to the Massachusetts Court, which they have reproduced as Appendix 5 (page 40a).
Petitioner's letter clearly states that: "I have not been served with any papers as to any action in your Court either as surviving spouse or guardian of Madeline."

Other misrepresentations, lies, characterizations and half-truths appear throughout Respondents' argument, which a review of the Record of Appeal (RA-page#) below or an application of common sense would disclose. Such as:

Page 11: "Petitioner has never offered any credible evidence to establish his incapacity claim" (RA-308 which is Petition Appendix I & RA-42 which is Petition Appendix K) and "his claims of undue influence and duress." See Affidavit of Joy Macy dated 1-8-99 (RA-128), Affidavit of Paula Litow dated 7-26-95 (RA-131)

Page 12: "Petitioner only reveals his lack of understanding of the law." Respondents are addressing the New York Amendment as to the rights of a surviving spouse. Respondents did not raise this argument in the New York Courts, Appellate or Court of Appeals, because those very Courts have not interpreted the language of the statute. Moreover, that factual issue of whether or not the vast assets of the Franchi Family Trusts, including Franchi Management Company, Inc., are subject to the New York jurisdiction is the exact reason this litigation has been so extensive, expensive and hardly fought. It is the "survivor's ability to break the trust" that "throws a wrench in some family business plans." This is the "substantial case" foreshadowed in the NY TIMES. See Petition Appendix J

Page18: Respondents mix apples and oranges. When addressing the requirement of a hearing they cite a case dealing with "questions of law" when clearly jurisdiction is a "question of fact".

There are so many other misstatements, misrepresentations and half truths that it would exhaust my time and space allowed for the Reply to Brief in Opposition to address each and every one. There can be no question there is a world of

difference in the facts presented and only a full hearing can separate the wheat from the chaff as to those factual issues. The Petition is not about facts, it is about the law and how the law is administrated in the State of New York in such a way to deny its citizens the equal protection of the law. There is no doubt Petitioner has been and is being denied his standing and rights as Debra Lynch's surviving spouse and the State of New York has sanctioned it.

CONCLUSION

It is respectfully requested that all the submissions be carefully read and reviewed, then you go home for the evening prior to deciding on the Petition. Upon your return the next day, please stop a few minutes on the steps and look up over the door of the Court. Then consider the Petition and determine its merit.

Respectfully submitted,

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